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| 10/669,195      | 09/24/2003  | Priti Srivastava     |                     | 2658             |

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EXAMINER

WILLATT, STEPHANIE L

ART UNIT PAPER NUMBER

3732

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/669,195

Applicant(s)

SRIVASTAVA, PRITI

Examiner

Stephanie L. Willatt

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Milani.

Milani discloses a combined headband and ponytail retaining device (20) including a substantially cylindrical band portion (fabric band and ponytail pull-through means 30), which includes a continuous circumference and a width. The circumference is stretchable at the elastic bands (31,32) so as to allow placement of the device around the head of a wearer. The cylindrical band portion (fabric band and ponytail pull-through means 30) incorporates a substantially elongated opening that is of a dimension to allow the wearer's ponytail to be pulled through the opening, as discussed in column 2, lines 47-56. The elongated opening is incorporated into the cylindrical band portion by means of a slit created directly in the material of the cylindrical band portion (fabric band and ponytail pull-through means 30) with the slit being substantially parallel to the circumference of the cylindrical band, as shown in Figure 3. The headband and ponytail retaining device is contained entirely within the circumference

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and the width. The opening is of a dimension to hold the wearer's ponytail snugly (column 2, lines 47-56). The opening is of a dimension to avoid bunching wearer's hair into a small, kink-forming diameter. The combined headband and ponytail retaining device are capable of being worn comfortably during a variety of activities and occasions.

Note: any reference to the process of making the product is not given weight.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Huang.

Huang discloses a combined headband and ponytail retaining device including a substantially cylindrical band portion (axial member 20 when its ends are tied as shown in Figure 4), which includes a continuous circumference and a width when the ends are tied. The circumference is stretchable at the elastic bands (column 2, lines 35-37) so as to allow placement of the device around the head of a wearer. The cylindrical band portion (20) incorporates a substantially elongated opening (11) that is of a dimension to allow the wearer's ponytail to be pulled through the opening, as discussed in column 2, lines 55-60. The elongated opening (11) is incorporated into the cylindrical band portion by means of a slit created directly in the material of the cylindrical band portion (20) with the slit being substantially parallel to the circumference of the cylindrical band, as shown in Figure 2. The headband and ponytail retaining device is contained entirely within the circumference and the width. The opening is of a dimension to hold the wearer's ponytail snugly (column 2, lines 55-60). The opening is of a dimension to avoid

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bunching wearer's hair into a small, kink-forming diameter. The combined headband and ponytail retaining device are capable of being worn comfortably during a variety of activities and occasions.

Note: any reference to the process of making the product is not given weight.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kirk.

Kirk discloses a combined headband and ponytail retaining device including a substantially cylindrical band portion (1), which includes a continuous circumference and a width. The circumference is stretchable by the buckle (4) so as to allow placement of the device around the head of a wearer. The cylindrical band portion (1) incorporates a substantially elongated opening (between bands 1 and 2) that is of a dimension to allow the wearer's ponytail to be pulled through the opening (between bands 1 and 2). The opening (between bands 1 and 2) is created by attaching the two ends of a substantially rectangular band (2) of material to two regions along the circumference of the cylindrical band portion (1), as discussed in lines 60-64 of page 1. The headband and ponytail retaining device is contained entirely within the circumference and the width. The opening (between bands 1 and 2) is of a dimension to hold the wearer's ponytail snugly. The opening (between bands 1 and 2) is of a dimension to avoid bunching wearer's hair into a small, kink-forming diameter. The combined headband and ponytail retaining device are capable of being worn comfortably during a variety of activities and occasions.

Note: any reference to the process of making the product is not given weight.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Obergfell in view of Huff.

Obergfell discloses a headband with an elongated opening (18, as shown in Figure 3) through which a ponytail may be pulled out of. However, Obergfell does not disclose the headband as being worn around the user's neck. Huff discloses that a band portion (wrap 10) may be worn around the user's head (Figure 19) or around the user's neck (Figure 14) in order to decorate either the head or neck of the user (column 2, lines 34-39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to put the band of Obergfell around the user's neck, as taught by Huff, in order to decorate a user's neck while providing a ponytail holder.

***Response to Arguments***

7. Applicant's arguments filed 20 July 2005 have been fully considered but they are not persuasive. With respect to Milani, applicant argues that Milani is not like the

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present invention because it has a visor and it would look odd if the user wore it in certain situations. However, the claims do not reflect that the present invention does not have a visor and even if it would look odd for a person to wear Milani's visor in certain situations, it would still be physically possible for someone to wear the visor in those situations.

Applicant argues that Huang does not disclose a continuous circumference. However, Huang has a continuous circumference when the ends are tied together. The claims do not reflect that the headband is a continuous cylinder of fabric. Therefore, any argument regarding that limitation is not persuasive.

Applicant argues that Kirk's opening is not a slit. However, the opening being a slit is not recited in claim 1. Applicant further argues that Kirk is not intended to be used in the same way as the present invention. However, the intended use does not change the fact that claim 1 reads on Kirk.

The rejection of claim 1 as being anticipated by Obergfell has been dropped, since Obergfell does not have a continuous circumference. However, the rejection of claim 5 over Obergfell in view of Huff still stands. Applicant argues that Obergfell's opening is not elongated. However, the opening is elongated, as shown in Figure 3. Applicant argues that Obergfell's bump would be uncomfortable. However, this problem does not make performing the method of claim 5 with Obergfell's headband impossible. Applicant argues that Huff does not teach that the headband of Obergfell be used around the neck. However, Huff teaches wearing a headband around a user's neck. One with ordinary skill in the art at the time the invention was made would have found it

obvious to wear Obergfell's headband around their neck after looking at Huff's headband being worn around a person's neck.

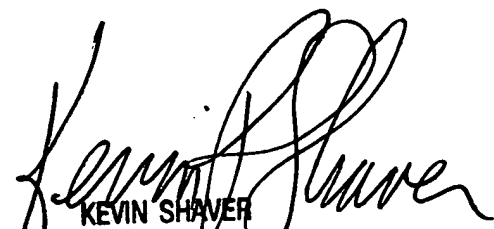
***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
slw

  
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